

1 SAN FRANCISCO, CALIFORNIA, OCTOBER 6, 1995 - 9:00 A.M.

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3 ADMINISTRATIVE LAW JUDGE REED: On the record.

4 This is the continuing evidentiary hearing in  
5 Investigation 95-05-047.

6 Mr. Sasser.

7 MR. SASSER: Thank you, your Honor.

8 There were a couple of transcript requests  
9 yesterday that we would like to respond to.

10 The first is a request, it says from  
11 Mr. Stover -- however, I think it may have been  
12 Ms. O'Reilly -- appearing on transcript page 869 to have  
13 Mr. Evans replot his Chart 4 showing Telesis' net income  
14 as opposed to Bell net income.

15 MR. STOVER: That was from me, your Honor.

16 MR. SASSER: Oh, I'm sorry. Let me provide you  
17 with a copy.

18 ALJ REED: It will be marked for identification as  
19 Exhibit No. 61.

20 (Exhibit No. 61 was marked for  
21 identification.)

22 MR. SASSER: The second request was a request from  
23 Ms. O'Reilly for current projections of capital  
24 expenditures through the Year 2000. And your Honor  
25 added to that a request for a comparison to what was in  
26 the Decision 93-11-011 compliance filing. I have that  
27 as well.

28 I have provided a copy to Ms. O'Reilly, and

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1 I'll provide one to your Honor.

2 This is a proprietary document, and  
3 Ms. O'Reilly had suggested that it be submitted under  
4 seal when she was asking for this yesterday.

5 ALJ REED: Okay. This will be marked for  
6 identification as Exhibit No. 62 with an asterisk noting  
7 that it is a proprietary document.

8 MS. O'REILLY: Off the record, your Honor?

9 ALJ REED: Off the record.

10 (Off the record)

11 ALJ REED: On the record.

12 I misspoke. The document that satisfies  
13 Ms. O'Reilly's request we had reserved yesterday as  
14 Exhibit No. 47. I will make a notice that it is a  
15 proprietary document.

16 And I'll make a correction about Exhibit 62.

17 MS. O'REILLY: If I may, I would like at this time  
18 to move Exhibit 47 into evidence.

19 ALJ REED: Any objections?

20 MR. STOVER: And --

21 ALJ REED: Is that something that we should await  
22 those that have just received a copy to look over?

23 MR. STOVER: Well, as for myself, your Honor, I  
24 have received the document and have no objection to it  
25 at this time.

26 ALJ REED: Thank you.

27 MR. FABER: Neither do I.

28 ALJ REED: Thank you. Exhibit No. 47 is received

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1 into evidence.

2 (Exhibit No. 47 was received into  
3 evidence.)

4 MR. STOVER: And if appropriate, your Honor, I  
5 would move at this time the admission of Exhibit 61.

6 ALJ REED: Any objections?

7 (No response)

8 ALJ REED: Exhibit No. 61 is received into  
9 evidence.

10 (Exhibit No. 61 was received into  
11 evidence.)

12 MR. STOVER: Thank you.

13 ALJ REED: With that, we will move to your witness,  
14 Mr. Faber.

15 Dr. Selwyn, if you'll raise your right hand.

16 LEE L. SELWYN, called as a witness by  
17 California Committee of Large  
18 Telecommunications Consumers (CCLTC), having  
been sworn, testified as follows:

19 ALJ REED: Thank you.

20 Would you please state your name, spelling  
21 your last name and give your business address for the  
22 record.

23 THE WITNESS: Yes. My name is Lee L. Selwyn,  
24 spelled S-e-l-w-y-n. My business address is  
25 1 Washington Mall, Boston, Massachusetts 02108.

26 MR. FABER: Your Honor, on September 8th, we  
27 distributed to you and the parties a copy of a document  
28 entitled Direct Testimony of Lee L. Selwyn. I would

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1 like to have that marked as the next exhibit in order.

2 ALJ REED: It will be marked as Exhibit No. 62.

3  
4 (Exhibit No. 62 was marked for  
identification.)

5 MR. FABER: And on September the 18th, 1995 we  
6 distributed to you and the parties the document entitled  
7 rebuttal testimony of Lee L. Selwyn and we would like to  
8 have that marked as the next exhibit in order please.

9 ALJ REED: It will be marked for identification as  
10 Exhibit No. 63.

11  
12 (Exhibit No. 63 was marked for  
identification.)

13  
14 DIRECT EXAMINATION

15 BY MR. FABER:

16 Q Dr. Selwyn, do you have in front of you a copy  
17 of your direct testimony that's been marked Exhibit 62?

18 A Yes, I do.

19 Q If I were to ask you the questions that are  
20 set forth in that exhibit today, would your answers be  
21 the same?

22 A They would.

23 Q Do you have any changes or corrections to  
24 Exhibit 62?

25 A Not that I'm aware of.

26 Q Do you adopt that as your testimony here  
27 today?

28 A Yes, I do.

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1 Q And do you have in front of you a copy of your  
2 rebuttal testimony marked as Exhibit 63?

3 A Yes.

4 Q If I were to ask you the questions set forth  
5 in that document, would your answers be the same?

6 A They would.

7 Q And do you have any corrections or changes to  
8 that exhibit?

9 A Not that I'm aware of.

10 Q And do you adopt that as your rebuttal  
11 testimony today?

12 A I do.

13 MR. FABER: Your Honor, subject to  
14 cross-examination I move the admission of Exhibit 62 and  
15 63, and Dr. Selwyn is available for cross-examination.

16 ALJ REED: Thank you Mr. Faber.

17 Mr. Sasser.

18 MR. SASSER: Thank you your Honor.

19 CROSS-EXAMINATION

20 BY MR. SASSER:

21 Q Good morning, Dr. Selwyn. I'm Mike Sasser for  
22 Pacific Bell.

23 A Good morning.

24 Q I have just a few questions for you,  
25 Dr. Selwyn.

26 Would you turn to page 13 of your testimony.  
27 There you ask the question: Is there reason to believe  
28 that Pacific Bell and GTEC investors are satisfied with

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1 the ongoing operation of NRF?

2 And your answer begins: Indeed there is.

3 And within the body of that answer you  
4 reference a recent report by Salomon Brothers.

5 Can you tell us your understanding of who or  
6 what Salomon Brothers is?

7 A Salomon Brothers is an investment banking and  
8 securities firm located in New York. The report was --  
9 I obtained the report as a result of an ex parte  
10 submission by Pacific Bell before this Commission.

11 Q Now, in that response, you say a recent report  
12 by Salomon Brothers, circulated as ex parte filing by  
13 Pac Bell distributed in July, describes that LECs have  
14 high-margin monopolies today that are just beginning to  
15 face competition.

16 Do you see that?

17 A Yes.

18 Q And you cite page 4 of that report; is that  
19 correct?

20 A Yes.

21 MR. SASSER: Your Honor, I have a two-page  
22 document. The first is the cover sheet of that report  
23 which is entitled "Regional Bell Operating Companies  
24 (RBOCs) Creeping Competition In Local Service Implies  
25 Shrinking Margins And Market Share For RBOCs." And I  
26 have page 4 attached to it which is the page that Dr.  
27 Selwyn cited.

28 May I have a copy of that marked next order?

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1 ALJ REED: It will be marked for identification as  
2 Exhibit No. 64.

3  
4 (Exhibit No. 64 was marked for  
identification.)

5 MR. SASSER: Q Now your testimony --

6 MR. STOVER: Excuse me, your Honor. May we have a  
7 chance to review this before Mr. Sasser begins  
8 questioning?

9 MR. SASSER: Sure.

10 ALJ REED: Off the record.

11 (Off the record) ]

12 ALJ REED: On the record.

13 MR. SASSER: Q The portion of the report that you  
14 quoted appears under a section entitled "Wrong Part of  
15 the Cycle to Invest in RBOCs," is that correct?

16 A Yes.

17 Q And the complete sentence in which the words  
18 that you picked for your testimony appear is as  
19 follows:

20 "Consequently, we believe that if  
21 one accepts the premise that there  
22 will be a free-for-all of sorts with  
23 lots of players attempting to  
24 provide branded end-to-end  
25 solutions, then we would argue the  
26 most give is at the local level  
27 where you have high margin  
28 monopolies today that are just

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1 beginning to face competition, the  
2 onslaught of new capacity and having  
3 to learn how to compete. All this  
4 spells lower return on investments  
5 for the Regional Bells."

6 Is that correct?

7 A That is what it says.

8 Q And in the preceding paragraph where it also  
9 notes the beginning of competition, the first few  
10 sentences read:

11 "Competition is just beginning to  
12 hit the local market. What happens  
13 the first time AT&T or MCI sends a  
14 check to a customer to switch to  
15 local service? The cost of customer  
16 retention and acquisition will  
17 skyrocket for the RBOCs."

18 Now, is it your testimony that this paints a  
19 rosy picture for -- from an investor standpoint for  
20 those LECs that face the beginning of local  
21 competition?

22 MR. FABER: Excuse me, your Honor. I am going to  
23 raise an objection to that question.

24 Mr. Sasser has chosen to ask Dr. Selwyn if a  
25 particular portion of the document paints a rosy  
26 picture. Dr. Selwyn testified that he reviewed the  
27 whole document and cites at Footnote No. 9. He does  
28 quote from a portion of it, there is no doubt about



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1 that, but his comments about this document and his  
2 comments about Pacific Bell's financial performance are  
3 in part at least based on the entire document.

4 I think if Mr. Sasser wants to ask his opinion  
5 about what the document points to, he ought to introduce  
6 the entire document as an exhibit.

7 MR. SASSER: Well, your Honor, Dr. Selwyn's  
8 testimony was that there was reason to believe Pac Bell  
9 and GTEC investors are satisfied with the ongoing  
10 operation of NRF. I have no problem in introducing the  
11 entire report as an exhibit if that is your Honor's  
12 desire.

13 MR. FABER: At that point of course I will want to  
14 take a recess so that we can go through it and Dr.  
15 Selwyn can respond fully to that question.

16 MR. STOVER: May I be heard briefly?

17 ALJ REED: Yes.

18 MR. STOVER: I am just looking at a run-over  
19 sentence from the previous page that we are not looking  
20 at. But if you look at that "monopoly today with very  
21 high margins and have to learn how to compete," I mean  
22 there is something interesting in that sentence that we  
23 are not seeing.

24 I have to agree with Mr. Faber that taking  
25 this out of context, just trying to put this part on the  
26 record as opposed to the entire document is just not  
27 going to make the record complete.

28 ALJ REED: Mr. Sasser, but you have the entire

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1 document?

2 MR. SASSER: Yes. I will have to make copies of  
3 it, your Honor, but I can have that done.

4 ALJ REED: Were you going to ask Dr. Selwyn about  
5 the whole of the document or were you just --

6 MR. SASSER: Your Honor, that was the last question  
7 I had of Dr. Selwyn.

8 MR. FABER: If that's true, your Honor, I am  
9 willing to allow Mr. Sasser to have an answer to that  
10 question and be done with it. I don't know about  
11 Mr. Stover, but if that is the last question -- --

12 MR. STOVER: I hear the Jeopardy theme playing in  
13 the background. I would still be more comfortable if we  
14 had the entire document for context. If Mr. Sasser has  
15 no objection, I would prefer that.

16 ALJ REED: Okay. Do you also want to review the  
17 document?

18 MR. STOVER: No, your Honor. I would not take the  
19 time for that.

20 MR. BROWN: Your Honor, I would request, however,  
21 that all parties be provided with a copy of the full  
22 document.

23 MS. GRAU: I would also note, your Honor, that  
24 portions of this document will have been admitted as  
25 Exhibits 48 and 64.

26 MS. BURDICK: Your Honor, only because I hate to  
27 foreclose rights before I even know the scope or extent  
28 of the waiver, if Mr. Sasser provides parties with

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1 copies of this report and if we have any  
2 cross-examination of Dr. Selwyn regarding that, I would  
3 like to preserve the right to have a little bit of  
4 cross-examination for clarification purposes with Dr.  
5 Selwyn after having an opportunity to review the entire  
6 Salomon report.

7 Now, it may be that I can do that over break  
8 and not waste one minute of your Honor's time, but I  
9 don't want to open the door where Mr. Sasser may travel  
10 down the road regarding this report but the other  
11 parties would be foreclosed from asking any follow-up  
12 questions regarding it.

13 MR. SASSER: Your Honor, if I might, I seem to have  
14 opened a Pandora's box. I can withdraw the last  
15 question.

16 MS. BURDICK: And the exhibit?

17 MR. SASSER: No. The exhibit, because this is the  
18 page that Dr. Selwyn cited, the exhibit will not be  
19 withdrawn.

20 ALJ REED: I do think that that still may leave the  
21 question of other parties wanting to look at the entire  
22 report.

23 MR. SASSER: I understand that, your Honor. I am a  
24 little bit concerned, though, about what is being raised  
25 by counsel for CCTA. I could have pursued a lengthy  
26 line of cross-examination based on this report. I chose  
27 instead to go to the section that Dr. Selwyn himself  
28 cited. I have also withdrawn the last question. I can

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1 provide a copy of the report, but I am very concerned  
2 about other parties then pursuing what I would believe  
3 would be a friendly line of cross-examination calling it  
4 clarification. That's my main concern on that.

5 MS. BURDICK: Your Honor, I think there is an easy  
6 way to compromise on this. If Dr. Selwyn is given the  
7 opportunity to speak to any other context that he relied  
8 upon in choosing an excerpt that he cited in the  
9 footnote or just having an opportunity to speak to the  
10 context much in the way that Mr. Sasser has addressed  
11 his reference to this particular page, then I would be  
12 happy.

13 And whether I would be offered that  
14 opportunity on cross-examination to allow him that  
15 opportunity or if your Honor would just allow him that  
16 opportunity, then I think we could avoid looking at the  
17 entire report, putting it into any context or taking any  
18 further time this morning with it.

19 ALJ REED: Well, Mr. Sasser has withdrawn the  
20 question. There is no question that's pending.

21 MS. BURDICK: No question pending. However, he did  
22 refer Dr. Selwyn just to that citation, and that leaves  
23 unasked the question of whether there was any other  
24 context for that citation that was important. And if he  
25 is going to insist on putting this in as an exhibit, I  
26 need to know whether the witness believes that this  
27 excerpt has been taken out of context.

28 MR. FABER: Your Honor, I might chime in on that.

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1 The next sentence in Selwyn's direct testimony cites to  
2 page 15 of this report, and Mr. Sasser for some reason  
3 of his own chose not to produce that particular page. I  
4 think that is the problem we are dealing with here.

5 MR. SASSER: Your Honor, Dr. Selwyn's testimony  
6 that I cross-examined on was very specific about LECs  
7 having high margin monopolies today that are just  
8 beginning to face competition. As I recall, my question  
9 was simply to ask him if the full sentence read as  
10 follows.

11 Your Honor, I don't see the relevance of  
12 beginning to go into other sections of the report. I  
13 simply -- he had extracted just a portion of the  
14 sentence, and I wanted to put it in the context of where  
15 that had come from in the Salomon Brothers' report.

16 MR. STOVER: Your Honor, may I be heard briefly?  
17 There is no doubt that it is perfectly acceptable for  
18 Mr. Sasser given Dr. Selwyn's reliance on this report to  
19 simply say is this what you relied on, mark it as an  
20 exhibit and put it in. That is absolutely acceptable.

21 By the same token, I have complete faith in  
22 your Honor that any, quote, clarifying questions that  
23 counsel for other parties might ask, you will be there  
24 monitoring to make sure that they are clarifying. So I  
25 don't have any concerns about that whatsoever.

26 My only concern is that this excerpt be  
27 admitted into the record without the entire context of  
28 the report. And I really think that is the only issue

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1     worth disputing about at this time.

2             If Mr. Sasser is offering to put it entirely  
3     in the record, I think we're fine.

4             ALJ REED: Mr. Sasser.

5             MR. SASSER: Your Honor, as I said, I will -- I can  
6     put the entire report in the record. I want to express  
7     once again my grave concerns about clarifying questions  
8     when I zeroed in on a single statement in Dr. Selwyn's  
9     testimony that stood for the proposition that high  
10    margin monopolies today are just beginning to face  
11    competition. And I was simply putting that in the  
12    context of the sentence that he extracted those words  
13    from.

14            ALJ REED: I understand that, Mr. Sasser. And I  
15    understand also that the concern is that the full  
16    context of the report be allowed to be reflected also.  
17    So if you will provide copies of the report for others  
18    to look over, we may have to at least revisit whether or  
19    not we mark and admit the report itself a little later  
20    on this morning or this afternoon.

21            MR. SASSER: Thank you, your Honor. I have nothing  
22    further.

23            ALJ REED: Mr. Golabek.

24            MR. GOLABEK: Thank you.

25                    CROSS-EXAMINATION

26    BY MR. GOLABEK:

27            Q     Good morning, Dr. Selwyn. I am Mike Golabek.  
28    I represent GTE California in this proceeding.

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1 I apologize if I start coughing during the  
2 proceeding, but I seem to have caught whatever Mr. Evans  
3 had on the stand last week.

4 I just have a few questions for you, but I  
5 don't think I will be nearly as brief as Mr. Sasser  
6 was.

7 Isn't it true, Dr. Selwyn, that the California  
8 Public Utilities Commission designed the new regulatory  
9 framework and its price cap mechanism to be a substitute  
10 for competition?

11 A In the general sense that economic regulation  
12 in whatever form it is implemented is an attempt to  
13 achieve a competitive outcome in the presence of market  
14 failure, I would say that the answer to your question is  
15 yes.

16 Did the Commission explicitly undertake to  
17 design the new regulatory framework with that in mind in  
18 some specific context that differed from its general  
19 objectives and economic regulation? I am not sure. I  
20 don't think so.

21 Q In your testimony, in your direct testimony  
22 which has been previously marked as Exhibit 62, you  
23 state that the Commission on page 4, line 18, the  
24 Commission did not anticipate making fundamental  
25 revisions to the NRF when it first adopted the incentive  
26 regulation system in 1989. Do you see where I am  
27 referencing to, Dr. Selwyn?

28 A Line --

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1 Q Line 18 and 19 on page 4 of your direct  
2 testimony.

3 A Yes.

4 Q Isn't it true that since that decision,  
5 however, Dr. Selwyn, the Commission said it would be  
6 necessary for it to examine the rapidly changing issues  
7 that would be related to the framework?

8 MR. FABER: I object to that question, your Honor.  
9 He just asked if the Commission said something. I would  
10 like a reference to what he is talking about.

11 MR. GOLABEK: Q I will withdraw that question and  
12 back up.

13 Is it your understanding, Dr. Selwyn, that  
14 since it issued decision in 1989 the Commission has  
15 intended to look at the NRF framework and adjust it for  
16 the changes that are occurring in the California  
17 marketplace?

18 A The 1989 decision contemplated review of the  
19 NRF framework to consider its effectiveness in achieving  
20 the goals of the NRF and to examine the validity of the  
21 various parameters that were established in the NRF  
22 formula. And we had completed one review. This is now  
23 the second review.

24 To the extent that changed circumstances, if  
25 in fact there are any changed circumstances, enter into  
26 the picture, then presumably that would be considered in  
27 the review.

28 Q You are here representing the CCLTC?



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1       A    I am appearing as a witness for the CCLTC.  
2   Mr. Faber is representing them.

3       Q    Who are the members of the CCLTC? What type  
4   of consumers?

5       A    Well, the L stands for large, and the T stands  
6   for telecommunications, and the C stands for consumers.  
7   So by their title the implication is large  
8   telecommunications consumers.

9       Q    Do you know what type of large  
10   telecommunication consumers are represented by this  
11   organization or are members of this organization?    ]

12       A    Well, I don't know what you mean by "what  
13   type." They are big.

14       Q    Banks?

15       A    Banks, yes.

16       Q    Big businesses?

17       A    Yes.

18       Q    Now isn't it true that one of CCLTC's goals is  
19   to get lower prices from the LECs for its memberships?

20       A    CCLTC's goals are to assure that its members  
21   are treated fairly in regulatory proceedings before this  
22   Commission.

23           And in the context of adversarial proceedings  
24   where various parties such as the utilities stake out  
25   their positions and, generally speaking, highest  
26   possible revenues, then I would have to agree that as  
27   representatives of consumers' interests, their  
28   objectives would be to produce lower outcomes.

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1 Q I'd like to direct your attention to the  
2 bottom of page 5 and the top of page 6 of your direct  
3 testimony which was marked as Exhibit 62.

4 A Speaking of line 26 on page 5?

5 Q Yeah. The question that begins at line 26 and  
6 the answer that goes on to the next page.

7 Now in that question, Dr. Selwyn, you were  
8 asked: Doesn't the onset of competition at the local  
9 exchange level fundamentally change the business climate  
10 under which the NRF LECs operate; isn't that correct?

11 A That's what the question is, yes.

12 Q Okay. And your answer talks about the fact  
13 that onset should be of no surprise to Pac Bell or  
14 GTEC.

15 And I just want a clarification in regards to  
16 the question that was asked.

17 Is it your opinion in this proceeding that the  
18 onset of competition will not change the business  
19 climate, the business environment, the market  
20 environment that the LECs face?

21 MR. FABER: Your Honor, I'm going to object. The  
22 question is asked very specifically in the testimony and  
23 answered.

24 If I understand Mr. Golabek's question, what  
25 he just asked Dr. Selwyn is the exact question that  
26 appears on the bottom of page 26, the bottom of five --  
27 on page 5, line 26. I don't understand why he's reading  
28 the question to him.

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1       MR. GOLABEK: I'm asking for clarification because  
2 it appears to me, your Honor, that he didn't answer the  
3 question about whether or not the business climate or  
4 the marketplace environment will change with the onset  
5 of competition.

6       He says it should be of no surprise and will  
7 not result in operating changes, but he doesn't address  
8 the issue and I'd like to explore with him about whether  
9 or not the business climate will be changing with the  
10 onset of competition.

11       MR. STOVER: Your Honor?

12       ALJ REED: Mr. Stover.

13       MR. STOVER: I think it's legitimate for  
14 Mr. Golabek to probe here. But what I heard was the  
15 business climate or the market environment and I think  
16 he used several other phrases in rephrasing that  
17 aspect.

18       And I think as a foundational question he  
19 should first request whether Dr. Selwyn thinks there's a  
20 difference between the business climate and others  
21 stated in this question, the marketplace environment as  
22 stated by Mr. Golabek or any other qualifiers  
23 Mr. Golabek may have thrown in. Otherwise, it's a  
24 compound question.

25       MR. GOLABEK: I'll restate my question. I was just  
26 assuming that business climate and market environment  
27 were the same.

28       ALJ REED: Okay. Thank you.

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1       MR. GOLABEK: Q Mr. Selwyn, do you see a  
2 difference between the phrase "business climate" or "the  
3 market environment"?

4       A Yes.

5       Q Do you think the market environment that will  
6 be faced by the LECs after the markets will open to  
7 local competition will change?

8       A Relative to that which exists prior to that  
9 Commission. It will change somewhat. The extent of the  
10 change is something we'll have to see.

11       And the extent of the change will depend very  
12 heavily upon the outcome of the ongoing local  
13 competition proceeding in terms of the ultimate  
14 promulgation of market rules and other issues that will  
15 bear directly on the success or failure of such  
16 competition.

17       Q Now on page 11 of your testimony, Dr. Selwyn,  
18 you discuss or you used the phrase on line 12  
19 "competitive outcome." You see where I'm referencing?

20       A Yes.

21       Q My question to you is, has a competitive  
22 outcome occurred in the interLATA market?

23       A In the interLATA market?

24       Q Yes.

25       A I think in general it has.

26       This has been significant price competition in  
27 the interLATA market. The aggregate price level has  
28 gone down by a larger amount than the reductions; for

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1 example, in access charge payments by the interexchange  
2 carriers to LECs.

3 There are a considerable number of choices  
4 available to consumers at all levels of the market from  
5 the very smallest to very largest.

6 I think that any fair examination of the  
7 interexchange market suggests that, as a general matter,  
8 it has become substantially competitive.

9 Q Thank you, Dr. Selwyn.

10 If you could look a little lower on that page,  
11 around line 17, in the sentence that begins at that  
12 point, I'll read it for the record here.

13 You say:

14 "As additional competition develops  
15 in additional market segments to a  
16 point where it acts to constrain the  
17 NRF LECs prices and earnings, the  
18 existing NRF would simply 'drop out'  
19 on its own and the 'competitive  
20 outcome' would be achieved instead  
21 by competitive marketplace forces."

22 My question to you is -- I just want a  
23 clarification -- how would the existing NRF drop out on  
24 its own, what do you mean by that?

25 A Well, the existing NRF establishes ceiling  
26 price levels on services that are subject to competition  
27 in Category 2.

28 And I think as I've described in this

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1 testimony, as more services become subject to  
2 competition as a consequence of the Commission's  
3 determination to open up additional segments, market to  
4 competition, and are hence reclassified to Category 2,  
5 the LECs will have pricing flexibility in the downward  
6 direction and will face ceiling prices in the upward  
7 direction.

8         Now the ceiling prices themselves have been  
9 set under the NRF formula or at least the intention is  
10 that they be set so as to achieve a competitive  
11 outcome. That is, to track the price levels that would  
12 be expected of a firm confronting competitive conditions  
13 under the price cap concept in which rather than examine  
14 earnings and cost information, the regulatory process  
15 focuses on price level changes.

16         Now if competition is successful in  
17 constraining, in effect accomplishing the same sort of  
18 pricing constraint as the NRF itself accomplishes, then  
19 the NRF would basically cease to operate in the  
20 competitive market, constraints would become operative  
21 at this point so the NRF would drop out.

22         So if we start with the assumption that the  
23 NRF has -- is designed to achieve a competitive outcome  
24 then with a competitive outcome actually forthcoming in  
25 the market it will supplant the NRF.

26         Q I'd like you now to take a look on page 18 of  
27 your testimony and in that paragraph at the bottom of  
28 the page, Dr. Selwyn, you use a phrase in a few

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1 different places -- for example, on line 20, you say  
2 investors are aware; on line 22 you say investors know;  
3 again on line 28, you say investors know and  
4 understand.

5 My question to you is, in regard to this  
6 paragraph, have you performed any survey of investors to  
7 find out what they know or are aware of, or is this your  
8 opinion?

9 A Well, my opinion is based -- it is my opinion,  
10 but it is based not upon subjective interviews with  
11 investors as to their knowledge but upon examination of  
12 what investors do when they put their money where their  
13 mouth is in terms of their willingness to bid up shares  
14 of the regional Bell's and other LECs to premium levels  
15 that are substantially in excess of book value -- that  
16 are substantially in excess of, for example, the  
17 premium, much smaller premiums that investors are  
18 willing to pay for electric and gas utilities shares.

19 Q Okay.

20 A So my assumption is that we're dealing with  
21 rational investors who, having considered the kind of  
22 advice that Salomon and any number of pundits are  
23 willing to provide, make their judgments and evaluations  
24 of the value of these companies given the market  
25 condition as they see them.

26 Q Okay. But my question to you was have you  
27 done any survey of investors to find out their  
28 preferences?

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1       A   As I said, I have looked at the results of  
2   what investor behavior is, and I have not asked them  
3   individually what they think.

4           So, yes, I've done a survey, but that's the  
5   nature of the survey that I've done.

6       Q   Now you reference the value of market-to-book  
7   shares in your testimony here.

8           And on page 20 at line 15-16, you make the  
9   statement that:

10           "The fact that the LEC's shares are  
11   trading at a premium demonstrates  
12   that the goal of the new regulatory  
13   framework is being achieved."

14           Do you see that sentence?

15       A   Yes.

16       Q   Okay. Now in your testimony, you referenced  
17   the market-to-book ratio for GTE Corporation; isn't that  
18   correct?

19       A   Yes.

20       Q   And isn't that market-to-share book ratio  
21   based on GTE Corporation's operations in 28 states and  
22   foreign countries and its cellular company?

23       A   Oh, certainly.

24       Q   And it's not just based on GTE California;  
25   isn't that correct?

26       A   That's correct. And I'm also not relying on  
27   that exclusively for my opinion. I'm relying very  
28   heavily on the condition of Pacific Bell --



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1 MR. GOLABEK: Your Honor --

2 THE WITNESS: -- Pacific Telesis.

3 MR. GOLABEK: He's going beyond the question.

4 ALJ REED: Mr. Golabek, I'm going to let

5 Dr. Selwyn explain his answer.

6 Continue, Dr. Selwyn, with your answer.

7 ALJ REED: Thank you, your Honor.

8 My principal reliance for exactly the reason

9 that you state has been on the behavior of Pacific

10 Telesis' stock which in fact is primarily a single-state

11 operating company with only very small operations in

12 Nevada.

13 And my reference to GTE and to some of the

14 other regional Bells is simply to know that the behavior

15 is consistent.

16 MR. GOLABEK: Q That's fine.

17 At the bottom of page 20, Mr. Selwyn --

18 Dr. Selwyn, you discuss confiscation.

19 Now it's true, Mr. Selwyn, that you're not a

20 legal expert on principles of confiscation; isn't that

21 correct?

22 A That is correct.

23 Q On page 22, Dr. Selwyn -- and I believe this

24 is one of several places you mention this in your

25 testimony -- but on line 10 and 11 you discuss the fact

26 that initial rate levels and ongoing rate adjustments

27 must also be revised to reflect competitive market

28 outcomes.